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FISCAL IMPACT STATEMENT

LS 7456 | **NOTE PREPARED:** Feb 22, 2013
BILL NUMBER: SB 552 | **BILL AMENDED:** Feb 21, 2013

SUBJECT: Public Deposits.

FIRST AUTHOR: Sen. Holdman | **BILL STATUS:** CR Adopted 1st House
FIRST SPONSOR:

FUNDS AFFECTED: X **GENERAL** | **IMPACT:** State & Local
X **DEDICATED**
FEDERAL

Summary of Legislation: (Amended) This bill has the following provisions:

It repeals and removes unused provisions concerning a loan made by the State Board of Finance and purchased by the Board for Depositories for economic development projects.

The bill terminates the use of interest on the Public Deposit Insurance Fund (PDIF) for local pension relief. It requires Budget Committee review before money in the PDIF may be used for a purpose other than paying expenses for the administration of the fund, to invest, reinvest, and exchange specified investments, paying allowable operational expenses, paying claims on insured public deposits, and making deposits of uninvested funds.

The bill provides for 10-year payback of the $50 M loan made to the state General Fund from the PDIF. It annually appropriates $5 M from the state General Fund to the State Budget Agency (SBA) to make the annual loan payments for 2013 through 2022.

The bill reduces the financial institutions franchise tax rate over four years, from 8.5% for taxable years beginning before January 1, 2014, to 6.5% for taxable years beginning on or after January 1, 2017.

The bill provides that a seller in any sales or lease transaction that is entered into at a seller's place of business located in Indiana may not impose a surcharge on any customer that elects to use a credit card as a means of payment instead of payment by cash, check, or similar means. It provides that, in any sales or lease transaction that: (1) is offered by a seller that, regardless of whether the seller has a physical presence in Indiana, has advertised or solicited sales or leases to Indiana customers by any means; and (2) is entered into by an Indiana customer; the seller may not impose a surcharge on the Indiana customer if the Indiana customer elects to use a credit card as a means of payment instead of payment by cash, check, or similar means. It provides that a credit card issuer may not, by contract or otherwise, prohibit a seller from offering a discount for payment by cash, check, or similar means rather than for payment by credit card in any sales or lease transaction entered into: (1) at a seller's place of business located in Indiana; or (2) by an Indiana customer. It specifies that the provisions concerning credit card surcharges and cash discounts do not apply to a sales or lease transaction in which an Indiana customer enters into a sales or lease transaction at a seller's place of business located in another state.

The bill provides that a violation of the provisions concerning credit card surcharges and cash discounts is a violation of the Indiana Code chapter concerning deceptive consumer sales and is subject to the penalties set forth in that chapter.

Effective Date: (Amended) July 1, 2013.

Summary of NET State Impacts: (Revised) A summary of impacts from provisions in the bill on state funds are specified in the table below.

Provision	**FIT Rate Reduction**	**Eliminating PDIF Interest Transfer to Pension Relief Fund**	**Appropriation to Repay PDIF Loan**	**Close Out of Pension Distribution Fund**	**Loan Repayment/ Reduced Transfer Out**
Fund Affected	**General Fund**	**Pension Relief Fund**	**General Fund**	**General Fund**	**PDIF**
FY 2013	Minimal	-	-	$0.2 M	
FY 2014	($2.4 M)	($0.8 M)	($5.0 M)		$5.8 M
FY 2015	($7.1 M)	($1.3 M)	($5.0 M)		$6.3 M
FY 2016	($11.8 M)	($1.2 M)	($5.0 M)		$6.2 M
FY 2017	($16.5 M)	($2.5 M)	($5.0 M)		$7.5 M
FY 2018	($18.8 M)	($5.8 M)	($5.0 M)		$10.8 M
FY 2019	($18.8 M)	($7.6 M)	($5.0 M)		$12.6 M
FY 2020	($18.8 M)	($7.6 M)	($5.0 M)		$12.6 M
FY 2021	($18.8 M)	($7.6 M)	($5.0 M)		$12.6 M
FY 2022	($18.8 M)	($7.6 M)	($5.0 M)		$12.6 M
FY 2023	($18.8 M)	($3.8 M)	($5.0 M)		$8.8 M
TOTAL	**($150.6 M)**	**($45.8 M)**	**($50.0 M)**	**$0.2 M**	**$95.8 M**

Explanation of State Expenditures: (Revised) *PDIF Loan Repayment:* The bill makes a $5 M annual appropriation to the State Budget Agency (SBA) beginning in FY 2014 and ending in FY 2023 to repay a $50

M loan made from the Public Deposit Insurance Fund (PDIF) to the state General Fund in 2004.This would increase state General Fund expenditures by $5 M annually beginning FY 2014.

An interest-free loan to the state General Fund was issued in 2004 from the PDIF. The maturity date of the loan has been extended by statute and the Board for Depositories to January 1, 2023.

(Revised) *Department of State Revenue (DOR):* The DOR would incur some administrative expenses relating to the revision of tax forms, instructions, and computer programs to reflect the financial institutions tax (FIT) rate changes. The DOR's current level of resources should be sufficient to implement these changes.

Explanation of State Revenues: (Revised) *Financial Institutions Tax (FIT) Rate Reduction:* The bill reduces the FIT rate from 8.5% to 6.5% over four years beginning in CY 2014. The table below summarizes the estimated annual revenue loss from the tax rate reductions.

Fiscal Year	Revenue Loss
2013	Minimal
2014	$2.4 M
2015	$7.1 M
2016	$11.8 M
2017	$16.5 M
2018	$18.8 M

The revenue loss could begin in FY 2013 as some financial institutions reduce estimated tax payments. However, the impact in FY 2013 should be minimal since approximately 85% of the financial institutions paying roughly 96% of the tax liability are calendar year filers. The table below summarizes the phase-in of the FIT rate reduction.

Calendar Year	Tax Rate
2013	8.5%
2014	8.0%
2015	7.5%
2016	7.0%
2017 and after	6.5%

(Revised) *PDIF Interest Transfer to Pension Relief Fund:* The bill removes provisions requiring the annual payment of interest from the PDIF less certain expenses of the Board of Depository to the Pension Distribution Fund beginning in FY 2014. Thus, the last payment of interest earnings from the PDIF to the Pension Distribution Fund under the bill would be the December 2012 payment. This would result in a loss of revenue to the Pension Relief Fund of $0.8 M in FY 2014 and $1.3 M in FY 2015. Since the bill closes out the Pension Distribution Fund on June 30, 2013, the estimated balance of $0.2 M in the fund will be transferred to the state General Fund.

(Revised) *Deceptive Consumer Sales:* The bill provides that a person that violates the provisions in the bill related to the 'Credit Card Surcharges by Sellers' commits a violation of the Deceptive Consumer Sales Act. The penalties for violation of the Deceptive Consumer Sales Act includes damages actually suffered and attorney fees incurred by an individual or class bringing suit. Additionally, the Attorney General (AG) may bring an action to enjoin a deceptive act or collect a civil fine of up to $500. The increase in revenue will ultimately depend upon the number of successful actions by the AG. The revenue from these civil penalties is deposited in the state General Fund.

(Revised) *Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of $100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee ($20), public defense administration fee ($5), court administration fee ($5), and the judicial insurance adjustment fee ($1) are deposited into the state General Fund. Revenue from the pro bono services fee ($1) is transferred by the State Auditor to the Indiana Bar Foundation for use to assist with pro bono legal services programs in Indiana. And proceeds from the automated record keeping fee ($5) are deposited into the state User Fee Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

<u>*Background:*</u>

(Revised) *Financial Institutions Tax* - Revenue from the FIT is distributed to local units and to the state General Fund. Local units are annually guaranteed revenue from the FIT. The amount guaranteed to a local unit is equal to the difference between: (1) the amount that was received by the taxing unit in 1989 under financial institutions taxes that were repealed and replaced by the FIT and (2) the amount received in the current year by the taxing unit from property taxes attributable to personal property of banks. FIT distributions to local units occur throughout the fiscal year until the guarantee is met. The local guarantee historically totals approximately $45 M. The estimate of state revenue loss assumes the residual FIT revenue distributed to the state General Fund will total $35 M annually, which is the historical average.

Once the rate reduction is fully phased in, annual FIT revenue could be at a level where in recessionary periods transfers from the state General Fund to local units might be required to pay the local guaranteed amounts. During recent economic downturns, FIT revenue has declined by an average of almost 21% from the historical average of about $80 M per year. Once the rate reduction is fully phased in, it is estimated that annual revenue could potentially total about $61.1 M. A cyclical revenue decline of 21% could potentially reduce this total down to about $48.5 M, just above the amount required to pay the local guarantee.

(Revised) *PDIF Interest Transfer to Pension Relief Fund*- Under current law, each year from 2001 through 2021, the interest from the PDIF less certain expenses of the Board for Depositories and of the Indiana Education Savings Authority that were not paid by other sources, is transferred to the Pension Distribution Fund. The Auditor of State, from 2002 until 2022, distributes two equal installment payments from the Pension Distribution Fund to the Indiana Public Retirement System for deposit into the Pension Relief Fund to help municipalities meet their benefit payment obligations under the pre-1977 retirement plans. From FY 2004 to FY 2012, the interest transfers net of expenses have averaged $7.8 M annually. However, in FY 2011 the transfer was $2.4 M, and in FY 2012 it was $0.5 M.

<u>Explanation of Local Expenditures:</u>

Explanation of Local Revenues: (Revised) *Financial Institutions Tax Rate Reduction:* [See *Explanation of State Revenues.*]

(Revised) *Court Fee Revenue:* If additional civil actions occur under the Deceptive Consumer Sales Act, local governments would receive revenue from the following sources. The county general fund would receive 27% of the $100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge, depending upon the particular type of case.

Persons filing a civil case are also required to pay the following fees that are deposited in local funds. The document storage fee ($2) is deposited into the clerk record perpetuation fund.

The following fees are deposited into the general fund of the county in which the court is located. Document fees ($1 per document) are charged for preparing transcripts or copies of record or certificate under seal. A service fee ($10) is collected from the filing party for each defendant beyond the first cited in the lawsuit.

State Agencies Affected: Board for Depositories; Board of Finance; State Budget Agency; State Department of Revenue; Attorney General.

Local Agencies Affected: Pension Relief Fund, trial courts, local law enforcement agencies.

Information Sources: Auditor of State, *2012 Comprehensive Annual Financial Report*, accessed at http://www.in.gov/auditor/2530.htm; *Indiana Board for Depositories Financial Statements*, Years Ended June 30, 2012 and 2011 and Years Ended June 30, 2011 and 2010; Indiana Board for Depositories, *Semi-Annual Report to the State Budget Committee*, December 4, 2012 and June 4, 2012 accessed at http://www.in.gov/tos/deposit/2374.htm . OFMA Income Tax databases, 2008.

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